

ATTACHMENT D

(TENANT)

**TREELINE ONE B COMMERCIAL LEASE
KALISPELL, MONTANA**

LEASE NO. 305XXXX

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EXHIBITS

Exhibit A - Plat (An initial project site plan will be replaced by final subdivision plat or certificate of approval as appropriate).

Exhibit B - Rental Schedule.

Exhibit C - Limited Power of Attorney.

Exhibit D – Sample Ground Lessor Non-disturbance and Attornment Agreement.

COMMERCIAL LEASE

HELENA, MONTANA

THIS COMMERCIAL LEASE (this "Lease") is entered into as of the _____ day of _____, (the "Commencement Date"), by and between the **Montana State Board of Land Commissioners**, whose address is P.O. BOX 201601 Helena, MT 59620-1601 (hereinafter referred to as "Lessor"), and _____, a Montana _____ company whose address is _____ (hereinafter referred to as the "Lessee").

1. DEFINITIONS AND EXHIBITS.

1.1 Definitions. In this Lease, the following defined terms have the meanings set forth for them below:

"Adjusted Base Rent" is the previous year's Base Rent multiplied by the Adjustment Period Escalator.

"Adjustment Period" is a multi-year Lease period as specified in Exhibit B, Rent Schedule during which a calculated Adjustment Period Escalator is applied annually to the prior year's Base Rent.

"Adjustment Period Escalator" is X.X% annually and applied to the prior year's Base Rent as specified in Exhibit B (*minimum 2%; set based on bid*).

"Affiliates" means, with respect to any party, any entities or individuals that control, are controlled by, or are under common control with such party, together with its and their respective partners, members, venturers, directors, officers, shareholders, trustees, trustors, beneficiaries, agents, employees and spouses.

"Base Rent" means the amount obtained by (a) multiplying the Land Value by the Lease Area, and (b) multiplying the resulting product by the accepted bid Lease Rate Percentage and as periodically adjusted by the Adjustment Period Escalator. Provided that the Adjustment Period Escalator will not be applied to Base Rent for the First Lease Year and the first year that any Market Adjustment is applied (i.e. Year 16, 31, 46, 61...etc...).

"Building" means any enclosed building constructed or installed upon the Land.

"Commencement Date" means the effective first date of this lease, as written herein above.

"Commercial Purpose" per MCA 77-1-902(3)(a) means an industrial enterprise, retail sales outlet, business and professional office building, warehouse, motel, hotel, hospitality enterprise, commercial or concentrated recreational use, multifamily residential development, and other similar business.

“Default Rate” shall mean 1% per month.

“Environmental Claims” means any and all administrative, regulatory or judicial actions, suits, demands, demand letters, claims, liens, notices of non-compliance or violation, investigations or proceedings relating in any way to any Environmental Law (hereafter, “Claims”) or any permit issued under any such Environmental Law, including, without limitation (a) any and all Claims by governmental or regulatory authorities for enforcement, cleanup, removal, response, remedial or other actions or damages pursuant to any applicable Environmental Law, and (b) any and all Claims by any third party seeking damages, contribution, indemnification, cost recovery, compensation or injunctive relief resulting from Hazardous Substances or arising from alleged injury or threat of injury to health, safety or the environment.

“Environmental Laws” means any existing and future Laws relating to, or imposing liability or standards of conduct concerning the protection of human health, the environment or natural resources, or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, handling, Releases or threatened Releases of Hazardous Substances, including, without limitation, The Comprehensive Environmental Cleanup and Responsibility Act, 75-10-701, et seq., MCA; the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601, et seq.; the Hazardous Materials Transportation Act, as amended, 49 U.S.C. § 1801, et seq.; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6901, et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251, et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601, et seq.; the Clean Air Act, 42 U.S.C. § 7401, et seq.; and the Safe Drinking Water Act, 42 U.S.C. § 300(f), et seq.

“Expiration Date” means the date the Term ends.

“First Lease Year” means the one-year period starting on the Commencement Date.

“Foreclosure Transferee” means any foreclosure purchaser or other transferee of Lessee’s interest under this Lease who acquires such interest at the sale conducted by virtue of, or otherwise in connection with, a foreclosure of any Leasehold Mortgage or any conveyance in lieu of such foreclosure.

“Hazardous Substances” means any and all substances, materials or wastes that are declared to be, or defined or regulated as, hazardous or toxic in CECRA, Section 75-10-701, et seq., MCA, or under any Environmental Law.

“Improvements” mean any Buildings, structures, pavement, landscaping, lighting fixtures or other improvements now or later installed or constructed upon the Land.

“Land” means the real property within the lease area consisting of approximately 1.26 acres located within Section 36 in Township 29 North, Range 22 West, PMM, City of Kalispell, Flathead County, Montana, as generally depicted on **Exhibit A**.

“Land Value” means the full market value of the Lease Area as determined by the applicable appraisal.

“Laws” means, subject to Section 5.2, any and all present or future federal, state or local laws (including common law), statutes, ordinances, rules, regulations, orders, decrees or requirements of any and all governmental or quasi-governmental authorities having jurisdiction over the Land described in this Lease.

“Lease Area” means the Land as shown and described on **Exhibit A**.

“Lease Rate Percentage” means *X.XX% as bid in the response to the request for proposal. The minimum is not to be less than that determined by Lessor in accordance with MCA 77-1-905.*

“Lease Year” means, after the First Lease Year, each successive Lease Year is the one-year period during the Term from March 1 to the last day of February.

“Leasehold Mortgage” means any mortgage, deed of trust, assignment of rents, assignment of leases, security agreement or other hypothecating instrument encumbering Lessee’s interest under this Lease or the leasehold estate in the Premises hereby created, Lessee’s rents and other sums due from any Sublessees, Lessee’s rights under Subleases and any other agreements executed in connection with Lessee’s use or operation of the Premises, or Lessee’s interest in any fixtures, machinery, equipment, Land, Buildings, Improvements or other property constituting a part of the Premises.

“Leasehold Mortgagee” means the holder(s) of any promissory note or the obligee(s) of any other obligation secured by a Leasehold Mortgage.

“Lessee’s Address” means:

“Lessor’s Address” means:

Montana Department of Natural
Resources and Conservation
Attn: Real Estate Management Bureau Property Mgmt Section
1625 Eleventh Avenue
PO BOX 201601
Helena, MT 59620-1601

With copies to:

Montana Department of Natural
Resources and Conservation, NWLO
Attn: Steve Lorch
655 Timberwolf Parkway, Suite 1
Kalispell, MT 59901-1215

“Market Adjustment” shall have the meaning and will occur as set forth in **Exhibit B, Schedule 1.**

“Premises” means the Land and all Improvements.

“Qualified Mortgagee” means any Leasehold Mortgagee who notifies Lessor in writing of its name, its address for notices and the fact that it is a Leasehold Mortgagee and includes with such notice a copy of any Leasehold Mortgage by virtue of which it became a Leasehold Mortgagee.

“Release” means disposing, discharging, injecting, spilling, leaking, leaching, dumping, emitting, escaping, emptying, seeping, placing or the like, into or upon any land, surface water, groundwater or air, or otherwise entering into the environment.

“Rent” means Initial Rent, Base Rent, and all other amounts required to be paid by Lessee under this Lease.

“Security Deposit” means \$10,000 and is further defined in section 18.1.

“Sublease” means a sublease, license, concession or other agreement (whether written or oral) according to which Lessee grants any party the right to use or possess all or any portion of the Premises.

“Sublessee” means any party to whom Lessee grants the right to possess all or any portion of the Premises according to a Sublease.

“Substantial Damage” means harm to Improvements that renders the Premises inoperable for its intended use for more than 180 days.

“Substantial Taking” means a Taking of at least 15% of the Land or Improvements which, in Lessee’s and Lessor’s reasonable judgment, will materially and adversely interfere with any development or use of the Premises that Lessee is then conducting or intends in good faith to conduct in the future.

“Taking” means the taking of all or any portion of the Premises as a result of the exercise of the power of eminent domain or condemnation for public or quasi-public use or the sale or conveyance of all or part of the Premises under the threat of condemnation.

“Taking Date” means, with respect to any Taking, the date on which physical possession of the portion of the Premises that is the subject of such Taking is transferred to the condemning authority.

“Taxes” means all general ad valorem real and personal property taxes and assessments levied upon or with respect to the Premises or the personal property used in operating the Premises, and all taxes, levies and charges which may be assessed, levied or

imposed in addition to, or in replacement of, all or any part of ad valorem real or personal property taxes or assessments as revenue sources, and which in whole or in part are measured or calculated by or based upon the Premises, the leasehold estate of Lessor, Lessee or the Sublessees, or the rents and other charges payable by Lessee or the Sublessees. Taxes will not include any income taxes of Lessor. Taxes shall also include any so-called "beneficial" use taxes imposed by Laws.

"Tax Year" means a 12-month period for which Taxes are assessed by the applicable taxing authority.

"Term" means the duration of this Lease, beginning on the Commencement Date and ending on the Expiration Date, unless terminated earlier or extended further as provided in this Lease.

"Title Company" means a national title company having offices in the state of Montana.

1.2 Exhibits. The Exhibits listed below are attached to and incorporated in this Lease. In the event of any inconsistency between such Exhibits and the terms and provisions of this Lease, the terms and provisions of the Lease will control. The Exhibits to this Lease are:

Exhibit A Plat (An initial project site plan will be replaced by final subdivision plat or certificate of approval as appropriate).

Exhibit B - Rental Schedule.

Exhibit C - Limited Power of Attorney.

Exhibit D – Sample Ground Lessor Non-disturbance and Attornment Agreement.

2. LEASE TERM.

2.1 Lease. Subject to the terms, covenants, conditions and provisions of this Lease, Lessor leases to Lessee and Lessee leases from Lessor the Land for the Term of ____ (*Specified in proposal. Limitations established in request for proposal*) years from and after the Commencement Date.

2.2 Lessee's Renewal Option. Subject to the terms and provisions of this Section 2.2, Lessee, at its option, may extend the Term of this Lease for an additional ____ (*Specified in proposal. Limitations established in request for proposal*) year term and subsequently additional ____ year terms, (collectively, the "Renewal Terms") provided, however, that the last of any such Renewal Terms must terminate no later than a date that is 99 years after the Commencement Date, per MCA 77-1-904 (1). The lease fee will be adjusted at renewal according to the process outlined in Schedule 1 of Exhibit B. To exercise each such option, Lessee must deliver notice of the exercise thereof to Lessor no later than 120 days prior to the expiration of (a) the initial Term as described in section 2.1, in the case of Lessee's option

with respect to the first Renewal Term, or (b) the Term as extended by the previously exercised Renewal Term. Should Lessee fail to give said timely notice, and Lessor gives notice to Lessee that the Lease is therefore terminated, Lessee shall have sixty days to cure notice provision and to exercise extension option.

2.3 Lessor and Lessee Covenants. Lessor covenants to observe and perform all of the terms, covenants and conditions applicable to Lessor in this Lease. Lessee covenants to pay the Rent when due, and to observe and perform all of the terms, covenants and conditions applicable to Lessee in this Lease.

2.4 Quiet Enjoyment. Lessor covenants that during the Term, Lessee will have quiet and peaceful possession of the Premises, subject only to the terms and conditions of this Lease.

2.5 Condition of Premises. Except as expressly set forth in this Lease, Lessee accepts possession of the Premises on the Commencement Date in their then-current condition on an "AS IS, WHERE IS AND WITH ALL FAULTS" basis.

3. RENT.

3.1 Base Rent. Commencing on the Commencement Date, then throughout the Term, Lessee agrees to pay Lessor, without deduction or offset of any kind or prior notice or demand, according to the following provisions. Base Rent during each Lease Year will be payable annually in the amount specified, for such Lease Year, in advance, on or before the first day of March. However, if the Commencement Date is not the first day of a Lease Year or the Term ends on other than the last day of a Lease Year, Base Rent for such Lease Year will be appropriately prorated.

3.2 Terms of Payment. Per MCA 77-1-905 (1) The First Lease Year rental payment for state trust land leased for commercial purposes must be paid by cashier's check, and payment is due upon execution of the lease. Failure to pay the First Lease Year's rental at the time of lease execution must result in the cancellation of the lease and forfeiture of all money paid. Second year rent will be pro-rated to cover the time between the end of the First Lease Year and through the end of February. From that point on, a Lease Year will be March 1st – February 28th. All Rent will be paid to Lessor in lawful money of the United States of America, at Lessor's Address, without notice or demand and without right of deduction, abatement or setoff, or to such other person or at such other place as Lessor may from time to time designate by written notice to Lessee. Lessee hereby acknowledges that late payment by Lessee to Lessor of Rent will cause Lessor to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Accordingly, **if any installment of Rent shall not be received by date such amount is due, then, without further notice, Lessee shall pay to Lessor a late charge equal to 10% of the overdue amount.** The parties hereby agree that such late charges represent a fair and reasonable estimate of the cost that Lessor will incur by reason of the late payment by Lessee.

3.3 Net Lease; Additional Rent. It is the intent of the parties that the Base Rent provided in this Lease will be a net payment to Lessor and that Lessor will not be required to pay any costs or expenses or provide any services in connection with the Premises and Lessee will

bear all costs and expenses relating to the Premises. Accordingly, Lessee covenants and agrees to pay, in addition to Base Rent, as additional Rent, but subject to the foregoing and the other provisions of this Lease, all costs and expenses relating to the Premises which accrue during or are allocable to the Term, including, without limitation: (a) the entire cost of designing, constructing or altering the Improvements; (b) insurance costs; (c) taxes and special assessments; (d) utility charges; and (e) maintenance and repair expenses of the lease land or lessee owned improvements.. This provision shall not be deemed to require Lessee to pay any overhead, supervisory or management costs incurred by Lessor concerning this Lease.

4. IMPROVEMENTS AND ALTERATIONS.

4.1 Lessor's Approvals Under Lease. Lessor has the right to review or approve matters relating to the development, placement, replacement or modification of the Premises by Lessee or the installation, construction, change or alteration of, addition to or removal or demolition of, any Improvements, or the use or enjoyment of the Premises, for any of which a Major Amendment is required to effectuate the change. For purposes of this Section 4.1, "Major Amendment" means an amendment of land use regulations that requires (by applicable Laws in effect as of the Commencement Date) an official vote by the City Council or, if the City Council delegates or is required to delegate by Laws its authority to a commission or other governmental or quasi-governmental authority, an amendment that would have required an official vote by the City Council as of the Commencement Date. Any approval of Lessor hereunder will not be unreasonably withheld.

4.2 Improvements and Alterations. Per MCA 77-1-906 (1) the Lessee shall be solely responsible for the expense of maintenance and operation of the enterprise, business, or venture and all improvements made and constructed in support of any commercial purpose during the term of the Lease. The foregoing sentence shall in no way impose on Lessee any obligation to maintain or operate any public utilities, roads or other infrastructure placed, installed or constructed on the Premises that are owned by a utility company or the public or that have otherwise been dedicated for public use unless the City requires otherwise. Subject to the terms and conditions of Section 4.1, Lessee, may at any time and from time to time during the Term, with the prior consent or approval from Lessor, which consent or approval shall not be unreasonably withheld (except as provided in Section 4.1), cause or permit any Buildings, structures, utilities, roadways or other Improvements to be installed or constructed on, over, under or across the Land or any part thereof and may cause or permit any Improvements now or later installed or constructed on the Land to be changed, altered, added to or removed or demolished in whole or in part. After approval from Lessor has been obtained, Lessee will provide Lessor notice of the commencement of any of the work set forth in the preceding sentence at least 10 business days before the commencement of the same. Such requirement for Lessor approval and of giving notice of commencement of work shall not be required for work conducted solely within any Building or for routine exterior maintenance or repair of any Improvement. Lessee will pay all costs and expenses arising out of the installation, construction, change or alteration of, addition to or removal or demolition of, any Improvements by Lessee and will cause all Improvements to be installed, constructed, changed, altered, added to, removed or demolished in accordance with applicable Laws. Lessor will have the right to post notices of non-responsibility or similar notices on the Premises in order to protect the Premises against any liens resulting from such work. Upon completion of the initial Improvements for the Premises or thereafter at the same time as the City

may require the same, Lessee shall deliver to Lessor an engineer's certificate for the Premises and an electronic "as-built" survey of the Premises in both AutoCAD and .pdf format as soon as reasonably practicable.

4.3 Governmental Approvals and Permits. Subject to the terms and conditions of Section 4.1, Lessee will have the right to apply for and secure, in Lessor's name if necessary, such governmental approvals, permits or other authorizations (including, without limitation, rezonings, master or final site plans, subdivision or P.U.D. plats and agreements, building permits, grading permits, sign permits and certificates of occupancy) as may be necessary or appropriate in connection with the development of the Premises or the installation, construction, change or alteration of, addition to or removal or demolition of, any Improvements, or the use or enjoyment of the Premises. Lessor will fully cooperate with Lessee's efforts to obtain such approvals, permits and other authorizations, including, without limitation, the execution by Lessor of any and all required submissions or applications within 10 days after Lessee submits the same to Lessor. Without limitation on Lessor's obligations set forth above, Lessor may agree to execute a revocable power of attorney appointing Lessee as its true and lawful attorney-in-fact to execute and deliver any such instruments and documents in Lessor's name or Lessee's name or otherwise, consistent with the terms, conditions, and restrictions set out in this Lease. The Lessor, in its sole discretion, shall decide whether such a Power of Attorney shall be issued and shall decide its term. In any event, any such Power of Attorney shall terminate upon the expiration or termination of the Term of this Lease. Lessor acknowledges and agrees that Lessee's subdivision application will seek subdivision and plat solely of the Land and will not include the plat of additional lots within the property owned by Lessor in the vicinity of the Land. Upon application of Preliminary Subdivision for the Premises, and upon City of Kalispell Final Plat approval, Lessee shall deliver to Lessor the electronic Preliminary and Final Plat files with full use rights in both ".dwg" and ".pdf" format as soon as reasonably practicable.

4.4 Title to Improvements. During the Term, Lessee or its designated Sublessees will be deemed to own, and will hold title to, all Improvements and will be entitled to all depreciation deductions, investment tax credits, deductions for taxes and any other tax advantages resulting from the ownership of the Improvements, subject to the Lessor's reversionary interest in the Improvements upon the expiration or termination of the Lease. Lessee, with the consent of Lessor which shall not be unreasonably withheld, shall have the right to grant liens or other security interests in the Improvements. On the expiration or earlier termination of the Term: (a) title to all Improvements then held by Lessee, except moveable personal property not constituting fixtures, will automatically vest in Lessor without representation or warranty per Montana Code Annotated 77-1-906 (2); and (b) title to all Improvements then held by any Sublessee will remain in such Sublessee until the expiration or earlier termination of the term of such Sublessee's Sublease, at which time title to such Improvements will automatically vest in Lessor without representation or warranty.

4.5 Utility and Road Infrastructure. Lessee will install water, sewer, stormwater, electric, communication lines, natural gas lines (the "Utility Lines"), roads (including sidewalks) and any other infrastructure as required by the City for the development of the leased land

5. USE AND OCCUPANCY.

5.1 Use. Subject to the requirements of Section 4.1, Lessee may make use of the Premises for any and all lawful uses and purposes that are consistent with applicable Laws. Lessee shall maintain the Premises in a clean, orderly and neat fashion, ordinary wear and tear and damage by casualty and condemnation excepted. Lessee shall keep the Premises in good repair and shall not commit waste or permit impairment or deterioration of the Premises, ordinary wear and tear and damage by casualty and condemnation excepted.

5.2 Compliance. Lessee will comply with all Laws applicable to Lessee's use and occupancy of the Premises and will keep and maintain the Premises in compliance with all applicable Laws. Lessee covenants and agrees that Lessee will not modify any document encumbering the Land that will (a) cause Lessee to be in violation of the terms of this Lease, and/or (b) materially increase the financial obligations of Lessor that exist in the documents encumbering the Land as of the date of execution of this Lease. Lessee will have the right, however, to contest or challenge by appropriate proceedings the enforceability of any Law or their applicability to the Premises or Lessee's use or occupancy thereof provided that Lessee complies with such Law during the pendency of Lessee's contest or challenge of it, so long as Lessee diligently prosecutes the contest or challenge to completion and, in the event Lessee loses the contest or challenge, thereafter continues to abide by and conform to such Law. Lessor and Lessee shall reasonably cooperate with one another and shall in no event attempt to hinder the other's efforts or take a position adverse to one another and their rights under this Lease. Lessee agrees to defend (with attorneys reasonably satisfactory to Lessor), protect, indemnify and hold harmless Lessor and its employees, agents, and representatives from and against any and all liabilities, obligations, losses, damages (excluding consequential damages and punitive damages), penalties, actions, judgments, suits, claims, costs, expenses and disbursements (including reasonable attorneys' and consultants' fees and disbursements) of any kind or nature whatsoever that may at any time be incurred by, imposed on or asserted against any of them directly or indirectly based on, or arising or resulting from Lessor, at Lessee's request, joining in any contest permitted under this Section 5.2. Notwithstanding anything contained in this Lease to the contrary, Lessor and Lessee specifically acknowledge and agree that this Lease is subject to the further provisions of Title 77 of the Montana Code Annotated. The Lessee agrees to comply with all applicable laws, rules, and regulations in effect upon the Commencement Date of this Lease and those laws, rules, and regulations which may be enacted or adopted thereafter from time to time and which do not impair or impede the obligations of this Lease and which do not deprive the Lessee of an existing property right recognized by law.

5.3 Environmental Matters.

(a) Compliance with Environmental Laws. Lessor has made no representations to Lessee concerning the presence of Toxic or Hazardous Substances within the definition of MT Comprehensive Environmental Cleanup and Responsibility Act (CECRA) on the Land. Based upon Lessor's lack of representations, the Lessee agrees as follows:

(i) Lessee will (A) comply with all Environmental Laws applicable to the operation or use of the Premises by Lessee or the construction, installation,

alteration or demolition of any Improvements by Lessee; (B) use reasonable efforts to cause all Sublessees and other persons occupying the Premises to comply with all Environmental Laws; (C) immediately pay or cause to be paid all costs and expenses incurred by Lessee in such compliance; and (D) keep or cause the Premises to be kept free and clear of any liens arising from Lessee's use and occupancy of the Premises imposed thereon pursuant to any Environmental Laws.

(ii) Lessee will not generate, use, treat, store, Release or dispose of, or permit the generation, use, treatment, storage, Release or disposal of, any Hazardous Substances on the Premises, or transport or permit the transportation of any Hazardous Substances to or from the Premises, in each case in any quantity or manner which violates any Environmental Law.

(iii) However, the provisions of this Lease shall not prohibit the transportation to and from, and use, storage, maintenance and handling within, the Premises of chemicals, substances or medical supplies customarily and lawfully used in medical offices (or such other business or activity expressly permitted to be undertaken in the Premises, but only as an incidental part of such business or activity); provided: (a) such chemicals, substances or medical supplies shall not be disposed of, released, discharged or permitted to leak or spill on the Land and shall be transported to and from the Premises in compliance with all applicable Laws; and (b) any remaining such chemicals, substances or medical supplies shall be completely, properly and lawfully removed from the Property upon expiration or earlier termination of this Lease. Further, the provisions of this lease shall not prohibit the generation, treatment, storage, disposal or transport of medical waste in connection with the use of all or any portion of the Premises as medical offices. Lessee covenants and agrees that the storage, handling, removal, and disposal of all medical waste at or from the Premises shall be done in compliance with all applicable Laws, and such storage handling, removal, and disposal shall be performed at Lessee's sole cost and expense.

(iv) If Lessor has knowledge of any pending or threatened Environmental Claim against Lessee or the Premises or has good reason to believe that Lessee or the Premises are in violation of any Environmental Law, at Lessor's written request (such request shall describe the basis for such request in reasonable detail), at any time and from time to time, Lessee will provide to Lessor an environmental site assessment report concerning the Premises, prepared by an environmental consulting firm reasonably approved by Lessor, indicating the presence or absence of Hazardous Substances and the potential cost of any removal or remedial action in connection with any Hazardous Substances on the Premises. Any such environmental site assessment report will be conducted at Lessee's sole cost and expense. If Lessee fails to deliver to Lessor any such environmental site assessment report within 90 days after being requested to do so by Lessor pursuant to this Section 5.3(a)(iii), Lessor may obtain the same, and, subject to the limitations set forth in Section 18.18 below, Lessee hereby grants to Lessor and its agents access to the Premises and specifically grants to Lessor an irrevocable non-exclusive license to undertake such an assessment, and the cost of

such assessment (together with interest thereon at the Default Rate) will be payable by Lessee on demand.

(v) Lessor may, at its option, at any time and from time to time, obtain at its sole cost and expense an environmental site assessment report for the Premises, and, subject to the limitations set forth in Section 18.18 below, Lessee hereby grants to Lessor and its agents access to the Premises and specifically grants to Lessor an irrevocable non-exclusive license to undertake such an assessment.

(vi) At its sole expense, Lessee will conduct any investigation, study, sampling or testing, and undertake any cleanup, removal, remedial or other action necessary to remove and clean up all Hazardous Substances from the Premises, which are on the Premises as a result of Lessee's activities under the Lease, which must be so removed or cleaned up in accordance with the requirements of any applicable Environmental Laws, to the reasonable satisfaction of a professional environmental consultant selected by Lessor, and in accordance with all such requirements and with orders and directives of all governmental authorities.

(b) Lessee Indemnity. Lessee agrees to defend (with attorneys reasonably satisfactory to Lessor), protect, indemnify and hold harmless Lessor from and against any and all liabilities, obligations (including removal and remedial actions), losses, damages (excluding punitive damages), penalties, actions, judgments, suits, claims, costs, expenses and disbursements (including reasonable attorneys' and consultants' fees and disbursements) of any kind or nature whatsoever that may at any time be incurred by, imposed on or asserted against Lessor directly or indirectly based on, or arising or resulting, in whole or in part, from: (i) the actual or alleged presence of Hazardous Substances on the Premises Released by Lessee or anyone acting by, through or under Lessee in any quantity or manner which violates Environmental Law, or the removal, handling, transportation, disposal or storage of such Hazardous Substances by Lessee or anyone acting by, through or under Lessee; or (ii) any Environmental Claim with respect to Lessee or the Premises resulting from a Release by Lessee or anyone acting by, through or under Lessee (collectively, the "Lessee Indemnified Matters"), regardless of when such Indemnified Matters arise.

(c) Survival. The remedial indemnification and reimbursement obligations under this Section 5.3 will survive the expiration or earlier termination of this Lease.

6. UTILITIES AND REPAIRS.

6.1 Utilities. Lessee will pay before delinquency all water, sewer, natural gas, electricity, telephone and any other utility charges related to the Premises including, without limitation, those which, if not paid, may be asserted as a lien or charge against the Premises under applicable Laws.

6.2 Repairs. Lessee will maintain, repair, replace and keep any Improvements or landscaping on the Land from time to time in reasonably good condition and repair in accordance

with all applicable Laws, including necessary repairs to the interior, exterior and structure of any Buildings, mowing of grass and care of shrubs and general landscaping; pay all costs and expenses in connection therewith (subject to Section 14.2); and contract for the same in Lessee's own name. The foregoing will not be construed to limit Lessee's rights under Section 4.2.

7. TAXES.

7.1 Payment of Taxes. Subject to Section 7.4, Lessee will pay before delinquency, directly to the taxing authority, all Taxes that accrue during or are attributable to any part of the Term, including privilege taxes, also known as beneficial use taxes, per MCA 15-24-1203. Lessee will deliver to Lessor reasonable evidence of payment of all Taxes within 60 days after Lessee pays all Taxes.

7.2 Proration at Beginning and End of Term. If the Term begins on other than the first day of a Tax Year or if the Term expires or otherwise terminates on other than the last day of a Tax Year, Taxes for the Tax Year in which the Term begins or ends, as the case may be, will be prorated between Lessor and Lessee, based on the most recent levy and most recent assessment. Such proration will be subsequently adjusted when the actual bills become available for Taxes for the Tax Year for which Taxes were prorated. Any taxes or assessments payable in the first Lease Year prior to the Commencement Date shall be the sole responsibility of Lessor.

7.3 Special Assessments. Lessee will pay all special assessments and other like impositions levied, assessed, or attributable to the Land during the Term; provided, however, that Lessee may pay in installments any such special assessments or like impositions that may be so paid according to applicable Law and, in such event, Lessee will only be required to pay those installments of any such assessments or impositions that become due and payable during the Term.

7.4 Tax Contests. Lessee will have the right to contest any Taxes or special assessments payable by Lessee, provided Lessee (a) provides Lessor with written notice of such contest, and (b) makes timely payment of the contested Taxes or special assessments if the Lessee loses the contest. In connection with any such contest, Lessee will have the right, at its sole expense, to institute and prosecute, in good faith and with due diligence and in Lessor's name if necessary, any appropriate proceedings. If requested by Lessee, Lessor may, at Lessee's expense, reasonably cooperate with and join in Lessee's efforts to contest any such Taxes or special assessments. Lessee agrees to defend (with attorneys reasonably satisfactory to Lessor), protect, indemnify and hold harmless Lessor from and against any and all liabilities, obligations, losses, damages (excluding consequential damages and punitive damages), penalties, actions, judgments, suits, claims, costs, expenses and disbursements (including reasonable attorneys' and consultants' fees and disbursements) of any kind or nature whatsoever that may at any time be incurred by, imposed on or asserted against Lessor directly or indirectly based on, or arising or resulting from Lessor joining in any contest pursuant to this Section 7.4.

8. WAIVERS AND INDEMNITIES; LIABILITY AND CASUALTY INSURANCE.

8.1 Acquisition of Insurance Policies. Lessee shall, at its sole cost and expense, procure and maintain, or cause to be procured and maintained during the entire Term, the

insurance described in this Section 8 (or if not available, then its available equivalent), issued by an insurance company or companies licensed to do business in the State of Montana that are reasonably satisfactory to Lessor.

8.2 Types of Required Insurance. Lessee shall procure and maintain, or cause one or more of its Sublessees to provide and keep in force and name Lessor as an additional insured, the following during the Term:

(a) Liability Insurance. Comprehensive or commercial general liability insurance covering claims arising out of the ownership, operation, maintenance, condition or use of the Premises, for personal and bodily injury and death, and damage to others' property, with limits of not less than **\$5,000,000.00** for any one accident or occurrence. Lessee may obtain some portion of this required coverage in the form of an excess liability policy. Lessor will be named as an additional insured in the policy(ies) providing such liability insurance, which will include cross liability and severability of interests clauses.

(b) Property Insurance. All-risk fire and extended coverage insurance (including standard extended endorsement perils, leakage from fire protective devices and other water damage) covering loss or damage to the Improvements on a full replacement cost basis, excluding existing architectural and engineering fees, undamaged excavation, footings and foundations. Some or all of such property coverage with respect to any Building or other Improvements subject to a Sublease may be maintained through self-insurance by the Sublessee, provided that in Lessee's reasonable judgment such Sublessee has sufficient financial capacity to self-insure such Building or Improvements.

(c) Workers' Compensation Insurance. Workers' compensation and employer's liability insurance (with limits satisfying applicable Laws) covering Lessee's employees, officers, agents and representatives employed at the Premises.

8.3 Terms of Insurance. The policies required under Section 8.2 above, shall name Lessor as additional insured and Lessee shall provide promptly to Lessor certificates of insurance evidencing the policies obtained by Lessee hereunder as hereinafter described. Proof of insurance ("Proof") shall consist of either (a) an insurance binder or premium payment receipt, (b) a copy of the policy, or (c) an "ACORD 27 Evidence of Property Insurance" or "ACORD 25 Certificate of Liability Insurance," whichever is appropriate (or such other similar certificates), issued by Lessee's insurer with respect to each required policy. If Lessee does not deliver the evidence required by the preceding sentence before taking possession of the Premises, then Lessee will deliver the same within 30 days after taking possession of the Premises. Thereafter, during the Term, within 30 days after the renewal date of each policy, the issuance of a new policy or on such other date as Lessor reasonably requires, Lessee will deliver a copy of the latest Proof to Lessor. Each policy of insurance will require the issuer of the insurance policy to give Lessor 30 days' advance written notice of the termination or modification of the policy. Further, all policies of insurance described in Section 8.2 above, shall:

(a) Be written as primary policies not contributing with and not in excess of coverage that Lessor may carry.

(b) Contain an endorsement providing that such insurance may not be materially changed, amended or canceled except after 30 days' prior written notice from insurance company to Lessor.

(c) Expressly provide that Lessor shall not be required to give notice of accidents or claims and that Lessor shall have no liability for premiums.

(d) Any deductibles in excess of \$20,000.00 must be approved to in writing by Lessor, provided that Lessor shall approve the same within 10 days of request using its commercially reasonable business judgment, which for purposes hereof, shall be measured by taking into consideration the opinions of three independent insurance companies having at least five years of experience insuring projects that are substantially similar to Lessee's project at the Premises.

9. DAMAGE OR DESTRUCTION.

(a) In the event of any Substantial Damage to or destruction of the Property or any Improvements thereon from any causes whatever, Lessee shall promptly give written notice thereof to Lessor. Lessee shall promptly repair or restore the Property as nearly as possible to its condition immediately prior to such damage or destruction unless Lessor and Lessee mutually agree in writing that such repair and restoration is not feasible, in which event this Lease shall thereupon terminate. All such repair and restoration shall be performed in accordance with the requirements of Section 4 above. Lessee's duty to repair any damage or destruction of the Property or any Improvements shall not be conditioned upon the availability of insurance proceeds, from Lessee's insurance, to Lessee from which the cost of repairs may be paid. Unless this Lease is so terminated by mutual agreement, there shall be no abatement or reduction in Rent during such repair and restoration. If a Default by Lessee shall have occurred and be continuing at the time such damage or destruction occurs, Lessor may elect to terminate this Lease by providing written notice of such election to Lessee.

(b) In the event such damage or destruction occurs within the last ten (10) years of the term of this Lease, and if such damage or destruction cannot be substantially repaired within one hundred eighty (180) days, either Lessor or Lessee may elect by written notice to the other, within ninety (90) days after the date of such damage or destruction, to terminate this Lease. If neither Lessor nor Lessee elects to terminate this Lease, Lessee shall repair or restore the Property as nearly as possible to its condition immediately prior to such damage or destruction or construct thereon such other improvements as may be approved by Lessor subject to the provisions of Section 9(a) above. In the event Lessor or Lessee elects to terminate this Lease, the Term of this Lease shall terminate one hundred twenty (120) days after the date of such damage or destruction.

10. CONDEMNATION.

10.1 Notice. If either Lessor or Lessee learns that all or any portion of the Premises has been or is proposed to be subjected to a Taking, such party will immediately notify the other of such Taking.

10.2 Termination Option on Substantial Taking. If a Substantial Taking occurs during the Term, Lessee may, at its option, terminate this Lease by giving notice to Lessor on or before 60 days after the Taking Date. In such event this Lease will terminate effective as of the Taking Date, Lessee will surrender the Premises according to Section 13 on or before 30 days after the date of Lessee's notice of termination and all Base Rent and other Rent will be apportioned to the Taking Date, except that Lessee will also pay Lessor for the reasonable value Lessee's occupancy of the Premises, if any, from the Taking Date until the date Lessee so surrenders possession.

10.3 Continuation of Lease. If a Taking occurs during the Term that is not a Substantial Taking, then this Lease will remain in full force and effect according to its terms, except that effective as of the Taking Date this Lease will terminate automatically as to the portion of the Premises that is the subject of such Taking and Base Rent will be adjusted to reflect the reduced Lease Area remaining after the Taking. If a Substantial Taking occurs but Lessee does not exercise its termination option according to Section 10.2, then this Lease will remain in full force and effect according to its terms, except that effective as of the Taking Date: (a) this Lease will terminate automatically as to the portion of the Premises that is the subject of such Taking; and (b) each payment of Base Rent due for any portion of the Term after the Taking Date will be will be adjusted to reflect the reduced Lease Area remaining after the Taking.

10.4 Awards for Permanent Taking. If there is an award, compensation, damages or consideration paid or payable as a result of or in connection with any permanent Taking or condemnation of the Premises, the award will be allocated as follows: First, Lessee will be entitled to the then current value of the Improvements placed by the Lessee upon the Premises and the net present value of the Lessee's interest in the unexpired Term of the Lease (including any Renewal Terms), net of the current value of the reversionary interest in favor of Lessor. Second, Lessor will be entitled to the value of the Land comprising the Premises (giving due effect to the Rent income in favor of Lessor hereunder, as if this Lease had not been terminated) and the value of Lessor's reversionary interest in the Improvements. Third, Lessee will be entitled to loss of fixtures that Lessee is entitled to remove pursuant to the terms hereof, to the extent it is a separate measure of damages in the condemnation award. Fourth, Lessor will be entitled to any other portion of the award not allocated pursuant to the foregoing provisions.

10.5 Award for Temporary Taking. If all or any portion of the Premises shall be taken for temporary use or occupancy (a "Temporary Taking"), the foregoing provisions of paragraph 10.4 shall not apply and the Lessee shall continue to pay, the full amount of rent and, except only to the extent that Lessee may be prevented from so doing pursuant to the terms of any order of the condemning authority, the Lessee shall perform and observe all of the other terms, covenants, conditions and obligations of this Lease as though the Temporary Taking had not occurred. In the event of a Temporary Taking, Lessee shall be entitled to receive the entire amount of the condemnation award made for such taking (the "Temporary Taking Award"),

unless the period of temporary use or occupancy shall extend beyond the Expiration Date in which case the Temporary Taking Award shall be apportioned between the Lessor and the Lessee as of the Expiration Date.

11. ASSIGNMENT, SUBLETTING AND FINANCING.

11.1 Assignment. Throughout the Term, Lessee may from time to time, with Lessor's prior written consent, assign in whole or in part, to a qualified Lessee, its interest under this Lease, such consent not to be unreasonably withheld. Lessor's consent will not be required for any transfer of Lessee's interest under this Lease to a Foreclosure Transferee. Lessor will recognize any Foreclosure Transferee as a substitute Lessee under this Lease and will honor all rights and interest of such substitute Lessee as if the substitute Lessee was the initial Lessee under this Lease and such Foreclosure Transferee shall be bound by the terms and conditions of this Lease. Additionally, if the Foreclosure Transferee is a Qualified Mortgagee, such Qualified Mortgagee shall have the right to assign its interest under this Lease without the consent of Lessor and, upon such assignment, Lessor shall recognize the assignee as a substitute Lessee under this Lease and the Qualified Mortgagee shall be released of any further liability under the Lease. If Lessee assigns its rights in this Lease, as permitted pursuant to this Section 11.1, and the assignee assumes, in writing, Lessee's obligations hereunder which arise on or after the date of such assignment, then Lessee shall be relieved of all liabilities hereunder accruing from and after the date of such assignment, but this Lease shall otherwise remain in full force and effect.

11.2 Subletting. Throughout the Term, Lessee may from time to time, with Lessor's prior written consent, sublet all or portions of the Premises. No sublease shall be legal until a copy thereof has been filed with the Lessor and approved by the Director of the Montana Department of Natural Resources and Conservation, such approval not to be unreasonably withheld. Upon the expiration of the Term or earlier termination of this Lease or upon repossession of the Premises by Lessor, Lessor shall accept the attornment of any Sublessee and upon any such attornment by a Sublessee, such Sublessee's sublease will become a direct agreement between Lessor and such Sublessee, binding upon each of them according to its terms; provided, however, that in no event will Lessor be obligated to accept the attornment of any Sublessee or create a direct agreement with any Sublessee after the date that is 99 years after the Commencement Date. In addition, upon Lessee's request, Lessor will execute and deliver to any Sublessee a subordination, non-disturbance and attornment agreement in substantially the same form attached hereto as **Exhibit D**.

11.3 Financing.

(a) Lessee's Right to Encumber. Throughout the Term, Lessee may from time to time and without Lessor's consent execute and deliver one or more Leasehold Mortgages securing any indebtedness or other obligation of Lessee. Without limiting the generality of the foregoing, Lessee may execute and deliver Leasehold Mortgages to secure promissory notes evidencing construction, interim or permanent financing for the Premises or to secure Lessee's obligations under development, reimbursement or other agreements with governmental or quasi-governmental entities, utility companies or other third parties concerning matters such as sales or property tax abatement or rebate programs, public improvements or utilities.

(b) Qualified Mortgagees' Cure Rights. Prior to terminating this Lease or exercising any other right or remedy hereunder for a Default by Lessee, Lessor will give each Qualified Mortgagee notice of such Default by Lessee and afford it a period of 30 days after such notice is given in which to cure such Default by Lessee; provided, however, that (i) if such Default by Lessee is not a failure to pay Rent and is susceptible of cure by a Qualified Mortgagee but cannot reasonably be cured within such 30-day period, then so long as any Qualified Mortgagee commences a cure within such 30-day period (and notifies Lessor that it has done so), its cure period will be extended for as long as reasonably necessary for it to diligently pursue the cure to completion; (ii) if such Default by Lessee is not a failure to pay Rent and is susceptible of cure by a Qualified Mortgagee but cannot reasonably be cured until the Qualified Mortgagee obtains possession of the Premises, then so long as any Qualified Mortgagee commences to obtain possession of the Premises within such 30-day period (and notifies Lessor that it has done so), its cure period will be extended for as long as reasonably necessary for it to obtain possession of the Premises and then promptly commence and thereafter diligently pursue the cure to completion.

(c) Prohibition Against Mutual Rescission. No mutual termination, cancellation, rescission or modification of a material provision of this Lease by Lessor and Lessee will be effective unless and until the same is approved in writing by each Qualified Mortgagee. All rights and remedies of the Qualified Mortgagee hereunder will be cumulative with, in addition to and non-exclusive of one another.

11.4 Assignment by Lessor. If Lessor sells or otherwise transfers the Land, or if Lessor assigns its interest in this Lease, such purchaser, transferee or assignee thereof shall be deemed to have assumed Lessor's obligations hereunder which arise on or after the date of sale or transfer, and Lessor shall thereupon be relieved of all liabilities hereunder accruing from and after the date of such transfer or assignment, but this Lease shall otherwise remain in full force and effect.

12. DISPUTE RESOLUTION.

12.1 Issues Subject to Administrative Hearing. Any controversy which may arise between Lessor and Lessee regarding the provisions hereof, including any amount of insurance to be maintained by Lessee, the allocation of any condemnation award, the degree of damage or destruction suffered by the Premises, shall be resolved by an administrative contested case hearing before the Lessor under the Montana Administrative Procedures Act.

12.2 Expert valuation for real property value disputes. In the case of issues relating to the determination of values of real property, the Lessor and the Lessee each agree to submit testimony and evidence prepared by a real estate appraiser who has a professional designation as an "MAI" or "SREA," or a member of a similarly recognized professional organization with at least five (5) years experience with the type of real estate at issue, in the area in which the Property is located.

12.3 Administrative Hearing Procedure. All administrative hearings hereunder shall be conducted in the offices of the Lessor in Helena, Montana. The findings of fact, conclusions

of law, and proposed decision of the hearing examiner shall be rendered within sixty (60) days of the completion of the hearing and submission of any briefs. Either party may file exceptions to the hearing examiner's findings, conclusions, and proposed decision with the Lessor's Director. The Lessee may, as permitted by the Lessor's administrative rules, petition for judicial review of the final administrative decision of the Lessor. Fees of the respective counsel engaged by the parties, and fees of expert witnesses or other witnesses called for the parties shall be paid by the respective party engaging such counsel or calling or engaging such witness.

13. LEASE EXPIRATION.

13.1 Condition at End of Lease. Upon vacating the Premises on the Expiration Date, Lessee shall leave the Premises in the state of repair and cleanliness required to be maintained by Lessee during the Term of this Lease and shall peaceably surrender the same to Lessor.

13.2 Lessee Shall Yield Premises. The Lessee shall upon the termination of this Lease peaceably yield up and surrender the possession of the Land to the Lessor or its agents or to subsequent Lessees or grantees for any cause.

13.3 Holding Over. Should the Lessee remain in possession of the Premises after the Expiration Date or termination without a written agreement providing for the same, Lessee will, at Lessor's option be deemed to be a Lessee from month to month, at a monthly Base Rent, payable in advance, equal to 150% of monthly Base Rent payable during the last full "Lease Year" prior to the Expiration Date or termination of this Lease, and Lessee will be bound by all of the other terms, covenants and agreements of this Lease as the same may apply to a month-to-month tenancy.

14. LIENS AND ESTOPPEL CERTIFICATES.

14.1 Liens. Lessee will not allow to be recorded, filed, claimed or asserted against the Premises any mechanic's lien for supplies, machinery, tools, equipment, labor or material contracted for, by, through or under such party and furnished or used in connection with any construction, development, alteration, improvement, addition to, demolition of or repair to or maintenance of any Building or other Improvement, or any lien for delinquent taxes, judgment lien or other involuntary lien of any nature arising by, through or under such party, and if the Lessee causes or permits any such lien to be so recorded, filed, claimed or asserted, the Lessee will cause the same to be released or discharged within 90 days thereafter. If the Lessee defaults under the foregoing covenant, then the Lessor may, upon written notice to Lessee, cause any such claimed lien to be released of record by bonding or payment or any other means available. All sums paid and costs and expenses, including reasonable attorneys' fees, incurred by the Lessor in connection therewith, together with interest on all such sums at the Default Rate from the date incurred until paid, will be due and owing from the Lessee to the Lessor upon demand therefore. The provisions of this Section 14.1 are subject in all respects to those set forth in Section 14.2 below.

14.2 Lien Contests. If Lessee has a good faith dispute as to any lien for which Lessee is responsible according to Section 14.1 Lessee may contest the same by appropriate proceedings so long as Lessee bonds over the lien or deposits with Lessor security in an amount acceptable to Lessor (but in no event more than the amount required by applicable Laws) which may be used by Lessor to release such lien and pay interest and costs if Lessee's contest is abandoned or is unsuccessful. Upon final determination of any permitted contest, Lessee will promptly pay any judgment rendered and cause the lien to be released. So long as Lessee is acting in conformity with this Section 14.2, Lessor will have no right to exercise its remedies under Section 14.1.

14.3 Estoppel Certificates. Lessor and Lessee agree that at any time and from time to time (but on not less than 10 business days' prior request by the other party), each party will execute, acknowledge and deliver to the other a certificate indicating any or all of the following: (a) the date on which the Term commenced and the date on which it is then scheduled to expire; (b) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect, as modified, and stating the date and nature of each modification); (c) the date, if any, through which Rent had been paid; (d) that no Default by Lessor or Default by Lessee exists which has not been cured, except as to defaults stated in such certificate; (e) that the responding party has no existing defenses or set-offs to enforcement of this Lease, except as specifically stated in such certificate; and (f) such other matters as may be reasonably requested by the requesting party. Any such certificate may be relied upon by the requesting party and, if Lessor is the requesting party, by any prospective purchaser of Lessor's reversionary interest in the Premises, or if Lessee is the requesting party, by any or present or prospective Leasehold Mortgagee, Sublessee or assignee of Lessee's interest under this Lease.

15. DEFAULTS BY LESSEE AND LESSOR'S REMEDIES.

15.1 Defaults by Lessee. Each of the following events, which continue beyond any applicable notice and cure period, will constitute a "Default by Lessee" under this Lease:

(a) Failure to Pay Rent. Lessee fails to pay any Base Rent or any other Rent payable by Lessee under the terms of this Lease when due, and such failure continues for 30 days after written notice from Lessor to Lessee of such failure.

(b) Failure to Perform Other Obligations. Lessee breaches or fails to comply with any provision of this Lease applicable to Lessee other than a covenant to pay Rent, and such breach or noncompliance continues for a period of 30 days after written notice thereof from Lessor to Lessee; or, if such breach or noncompliance cannot be reasonably cured within such 30-day period, Lessee does not commence to cure such breach or noncompliance within such 30-day period and thereafter pursue such cure in good faith to completion. Any non-payment or failure to pay debts and financial obligations can be grounds to cancel this Lease. Financial obligations include, taxes, insurance, environmental bonding, utilities and others.

(c) Execution and Attachment Against Lessee. Lessee's interest under this Lease or in the Premises is taken upon execution or by other process of law directed against Lessee, or is subject to any attachment by any creditor or claimant against Lessee and such attachment is not discharged or disposed of within 90 days after levy; provided,

however, that this provision shall not apply in the event of a foreclosure or transfer in lieu of foreclosure under a Leasehold Mortgage by a Qualified Mortgagee or to a transfer of Lessee's interest in this Lease and the Premises to a Foreclosure Transferee.

(d) Cancellation. Subject to the provisions of this Lease, the Lessor shall have the power and authority in its reasonable discretion to cancel a Lease for any of the following causes: (1) for fraud or misrepresentation, or for concealment of material facts relating to its issue, which if known would have prevented its issue in the form or to the party issued (as finally determined by a final judicial or administrative order); (2) for using the Land for other purposes than those authorized by this Lease and failing to remedy such unauthorized use within 30 days after written notice of such unauthorized use delivered to Lessee by Lessor. Such cancellation shall not entitle the Lessee to any refund of rentals paid or exemption from the payment of any rents, penalties or other compensation due the State. If any part of the Land or Premises is used or allowed or permitted to be used for any purpose contrary to the laws of this State, and of the United States, such unlawful use shall in the discretion of the Lessor constitute sufficient reason for the cancellation of the Lease, but only after Lessor has given Lessee written notice of the alleged unlawful use and Lessee fails to remedy or cure the unlawful use within 30 days. Lease cancellation is subject to appeal as provided in Section 77-6-211, MCA.

15.2 Lessor's Remedies. Time is of the essence. If any Default by Lessee occurs, Lessor will have the right, at Lessor's election, then or at any later time, to exercise any one or more of the remedies described below. Exercise of any of such remedies will not prevent the concurrent or subsequent exercise of any other remedy provided for in this Lease or otherwise available to Lessor at law or in equity.

(a) Cure by Lessor. Where there is a Default by Lessee, Lessor may, at Lessor's option but without obligation to do so, and without releasing Lessee from any obligations under this Lease, make any payment or take any action as Lessor deems necessary or desirable to cure any Default by Lessee in such manner and to such extent as Lessor in good faith deems necessary or desirable, provided that, prior to making any such payment or taking any such action, Lessor notifies Lessee in writing of Lessor's intention to do so and affords Lessee at least 10 days in which to make such payment or take such action. Lessee will pay Lessor, upon written demand, all advances, costs and expenses of Lessor in connection with making any such payment or taking any such action, including reasonable attorney's fees, together with interest at the Default Rate, from the date of payment of any such advances, costs and expenses by Lessor.

(b) Termination of Lease. Where there is a Default by Lessee, Lessor may terminate this Lease, effective at such time as may be specified by written notice to Lessee, and demand (and, if such demand is refused, recover) possession of the Premises from Lessee. In such event, Lessor will be entitled to recover from Lessee such damages as are allowable by applicable Laws.

(c) Repossession and Reletting. Where there is a Default by Lessee, Lessor may reenter and take possession of all or any part of the Premises, without additional demand or notice, and repossess the same and expel Lessee and any party claiming by,

through or under Lessee, and remove the effects of both, without being liable for prosecution for such action or being deemed guilty of any manner of trespass, and without prejudice to any remedies for arrears of Rent or right to bring any proceeding for breach of covenants or conditions. No such reentry or taking possession of the Premises by Lessor will be construed as an election by Lessor to terminate this Lease unless a notice of such intention is given to Lessee. No notice from Lessor or notice given under a forcible entry and detainer statute or similar Laws will constitute an election by Lessor to terminate this Lease unless such notice specifically so states. Lessor reserves the right, following any reentry or reletting, to exercise its right to terminate this Lease by giving Lessee such notice, in which event the Lease will terminate as specified in such notice. After recovering possession of the Premises, Lessor will use reasonable efforts to relet the Premises on commercially reasonable terms and conditions. Lessor may make such repairs, alterations or improvements as Lessor considers appropriate to accomplish such reletting, and Lessee will reimburse Lessor upon demand for all reasonable costs and expenses, including reasonable attorneys' fees, which Lessor may incur in connection with such reletting. Lessor may collect and receive the rents for such reletting but Lessor will in no way be responsible or liable for any inability to relet the Premises or to collect any rent due upon such reletting. Regardless of Lessor's recovery of possession of the Premises, so long as this Lease is not terminated Lessee will continue to pay on the dates specified in this Lease, the Base Rent and other Rent which would be payable if such repossession had not occurred, less a credit for any payments actually received by Lessor through any reletting of the Premises. However, in no event shall Lessee be responsible for the continuing payment of Base Rent or any other charges under this Lease for a period in excess of three years after Lessor's repossession of the Premises.

(d) Receiver. To properly effectuate the recovery of damages and other sums owing from Lessee to Lessor hereunder following a Default by Lessee, Lessor, in conjunction with any dispossession proceeding commenced pursuant to this Lease may seek an appointment of a receiver by a court of competent jurisdiction to the extent provided for in and compliance with the requirements of Title 25, Chapter 14, Part 2 of the Montana Code Annotated and Rule 66 of the Montana Rules of Civil Procedure, as they may be amended. In no event will Lessor be obligated to post a bond in connection with the appointment of a receiver.

(e) Bankruptcy Relief. Nothing contained in this Lease will limit or prejudice Lessor's right to obtain adequate assurances of the Lessee's future performance under 11 USC Section 365 or other applicable laws, or any other legal rights, in any bankruptcy, insolvency, receivership, reorganization or dissolution proceeding.

16. DEFAULTS BY LESSOR AND LESSEE'S REMEDIES.

16.1 Defaults by Lessor. The following event, which continues beyond the applicable notice and cure period, will constitute a "Default by Lessor" under this Lease: Lessor breaches or fails to comply with any provision of this Lease applicable to Lessor, and such breach or noncompliance continues for a period of 30 days after notice thereof from Lessee to Lessor; or, if such breach or noncompliance cannot be reasonably cured within such 30-day period, Lessor does not commence to cure such breach or noncompliance within such 30-day period and does not

thereafter pursue such cure in good faith to completion; provided, however, that any such cure period will terminate at such time, if ever, as the subject breach or failure to comply results in an actual or constructive eviction of Lessee.

16.2 Lessee's Remedies. Time is of the essence. If any Default by Lessor occurs, Lessee will have the right, at Lessee's election, then or at any later time, to exercise any one or more of the remedies described below. Exercise of any of such remedies will not prevent the concurrent or subsequent exercise of any other remedy provided for in this Lease or otherwise available to Lessee at law or in equity.

(a) Cure by Lessee. Lessee may, at Lessee's option but without obligation to do so, and without releasing Lessor from any obligations under this Lease, make any payment or take any action as Lessee deems necessary or desirable to cure any Default by Lessor in such manner and to such extent as Lessee in good faith deems necessary or desirable, provided that, prior to making any such payment or taking any such action, Lessee notifies Lessor of Lessee's intention to do so and affords Lessor at least 10 days in which to make such payment or take such action. Lessor will pay Lessee, upon demand, all advances, costs and expenses of Lessee in connection with making any such payment or taking any such action, together with interest at the Default Rate, from the date of payment of any such advances, costs and expenses by Lessee.

(b) Damages. Without limiting remedies available to Lessee at law, in equity or pursuant to this Lease, and regardless of whether this Lease is terminated, Lessee may commence and pursue any lawful action in a contested case proceeding before the Lessor under 2-4-101 MCA, et. seq., the Montana Administrative Procedures Act, to recover such damages as may be allowable as a result of or in connection with the Default by Lessor.

17. LESSEE'S RIGHT TO TERMINATE LEASE ON SPECIFIED CONDITIONS.

17.1 Failure to Obtain Necessary Approvals. In the event that, during the First Lease Year, the City of Kalispell does not approve the subdivision of the Land or Lessee is unable to obtain any permits or approvals necessary for the construction of the contemplated Improvements or operation of the business to be conducted on the Premises, the Lessee shall have the right, in its sole discretion, to terminate this Lease upon 10 days written notice to Lessor.

17.2 Effect of Termination. If Lessee exercises its right to terminate this Lease pursuant to this Section 17, Lessee's obligation to pay future Base Rent and all other rents and charges under the Lease shall terminate. In the event that such termination occurs on a day other than the last day of the First Lease Year, any rent or charges which have previously been paid by Lessee to Lessor shall be forfeited.

18. MISCELLANEOUS.

18.1 Security Deposit. Upon execution of this Lease, Lessee shall deposit with Lessor a \$10,000 Security Deposit which:

(a) shall be held by Lessor, as security for the performance of Lessee's obligations under this Lease; (b) not in any way be deemed an advance rental deposit or a measure of Lessor's damages upon an Event of Default; (c) Lessor may, from time to time after an Event of Default but without obligation to do so or prejudice to or waiver of any other remedy available to Lessor, use or apply in the manner and to the extent deemed appropriate or necessary by Lessor, in its sole discretion (an "Application") to remedy, cure, or otherwise address the Event of Default, which Application shall not, except to the extent provided by this Lease, cure or waive such Event of Default; and (d) shall, following any Application, be restored to its original amount upon request by Lessor.

Unless otherwise required by Applicable Law, Lessor: (a) shall not be required to segregate the Deposit from other funds of Lessor; (b) may use the Deposit for such purposes as Lessor may determine; (c) shall not be required to pay interest on the Deposit; (d) shall return the Deposit to Lessee (or, at Lessor's sole election to the last approved assignee, if any, of Lessee's interest hereunder) within sixty (60) days following the expiration of the Term or earlier termination of this Lease (but in any event not earlier than the date of re-delivery by Lessee of possession of the Premises to Lessor) if, at such time, Lessee has performed and complied with all its obligations under this Lease; and (e) shall, in the event of an assignment or other transfer of Lessor's interest in this Lease, transfer the Deposit to Lessor's successor-in-interest, whereupon Lessor shall be automatically deemed released from all liability in connection with the Deposit.

18.2 Notices. All notices required or permitted under this Lease must be in writing and will only be deemed properly given and received (a) when actually given and received, if delivered in person to a party who acknowledges receipt in writing; or (b) one business day after deposit with a private courier or overnight delivery service, if such courier or service obtains a written acknowledgment of receipt; or (c) 10 business days after the date postmarked on the cover of any correspondence or notice when deposited in the United States mails, certified – return receipt requested, with postage prepaid. All such notices must be transmitted by one of the methods described above to the party to receive the notice at, in the case of notices to Lessor, Lessor's Addresses, in the case of notices to Lessee, Lessee's Address, and in the case of notices to a Qualified Mortgagee, the address set forth as its notice address in its most recent notice to Lessor, or, in any case, at such other address(es) as Lessor, Lessee or a Qualified Mortgagee may notify the others of according to this Section.

18.3 Binding Effect. Each of the provisions of this Lease will extend to bind or inure to the benefit of, as the case may be, Lessor and Lessee, and their respective heirs, successors and assigns.

18.4 Modifications. This instrument contains the entire agreement between the parties, and no statement, promises or inducements made by either party, or agents of either party, which are not contained in this Lease shall be valid or binding and this Lease may not be enlarged, modified or altered except as provided in this Lease or unless signed by the parties. If executed properly under this section, modifications of this Lease do not need independent consideration to be legally enforceable.

18.5 Enforcement Expenses. Regardless of any statutory rights, each party agrees to bear their own costs, charges and expenses, including the fees and out-of-pocket expenses of attorneys, agents and others retained, incurred in successfully enforcing the other party's obligations under this Lease.

18.6 No Waiver. No waiver of any provision of this Lease will be implied by any failure of either party to enforce any remedy upon the violation of such provision, even if such violation is continued or repeated subsequently. No express waiver will affect any provision other than the one specified in such waiver, and that only for the time and in the manner specifically stated.

18.7 Captions. The captions of sections are for convenience of reference only and will not be deemed to limit, construe, affect or alter the meaning of such sections.

18.8 Severability. If any provision of this Lease is declared void or unenforceable by a final judicial or administrative order, this Lease will continue in full force and effect, except that the void or unenforceable provision will be deemed deleted and replaced with a provision as similar in terms to such void or unenforceable provision as may be possible and be valid and enforceable.

18.9 Waiver of Jury Trial. Lessor and Lessee waive trial by jury in any action, proceeding or counterclaim brought by Lessor or Lessee against the other with respect to any matter arising out of or in connection with this Lease, Lessee's use and occupancy of the Premises, or the relationship of Lessor and Lessee.

18.10 Authority to Bind. The individuals signing this Lease on behalf of Lessor and Lessee represent and warrant that they are empowered and duly authorized to bind Lessor or Lessee, as the case may be, to this Lease according to its terms.

18.11 Only Lessor/Lessee Relationship. Lessor and Lessee agree that neither any provision of this Lease nor any act of the parties will be deemed to create any relationship between Lessor and Lessee other than the relationship of Lessor and Lessee.

18.12 Reservation of Oil, Gas, and Minerals. Lessor expressly excepts and reserves from this Lease all rights to all oil, gas and other minerals in, on or under the Land and that might be produced or mined from the Land; provided, however, that no drilling, mining or other surface disturbance will be undertaken on the surface of this Lease, nor shall the Lessor interfere with the Lessee's right to subjacent support, during the Term of this Lease.

18.13 Reasonableness. At any time during this Lease, if Lessee is to use reasonable judgment, it shall be deemed to mean ordinary business judgment.

18.14 Governing Law; Venue and Jurisdiction. This Lease will be governed by and construed according to the laws of the State of Montana. Venue and jurisdiction for any dispute arising under this Lease shall be before the Lessor as a contested case proceeding under the Montana Administrative Procedures Act in Lewis and Clark County.

18.15 Time of Essence. Time is expressly declared to be of the essence of this Lease and each and every covenant of Lessee hereunder.

18.16 Broker. Lessor and Lessee represent and warrant that no broker or agent negotiated, or was instrumental in negotiating or consummating this Lease (the "Brokers"). Neither party knows of any other real estate broker or agent who is or might be entitled to a commission or compensation in connection with this Lease. Lessee and Lessor will indemnify and hold each other harmless from all damages paid or incurred by the other resulting from any claims asserted against either party by brokers or agents claiming through the other party.

18.17 Lessor May Inspect Premises. Representatives of the Lessor shall, upon 48 hours' notice to the Lessee, have the right to enter upon the Land (but not any Building thereon) for the purpose of inspecting and examining the Land and the exterior of Buildings and the exterior of other Improvements. Upon five (5) business days written notice to Lessee, Lessor and its Representatives may enter the Buildings and other Improvements for the purpose of inspecting and examining same, provided, that all Representatives of Lessor must, at all times, be escorted by a representative of Lessee. Any inspection or examination of the Buildings and Improvements shall not interfere with Lessee's use of the Premises or the business conducted therein.

18.18 Protected Health Information. For purposes of this Lease, Protected Health Information ("PHI") shall have the meaning defined by the Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Part 160 and Subparts A and E of Part 164, as promulgated by the Department of Health and Human Services pursuant to the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996. The parties agree that neither Lessor nor its Affiliates shall need access to, nor shall they use or disclose, any PHI of Lessee.

Having read and intending to be bound by the terms and provisions of this Lease, Lessor and Lessee have signed it as of the Effective Date.

LESSEE, (Tenant):

By: _____

(Authorized signatory name and title)

STATE OF _____)
) ss:
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____,
20____ by _____ as authorized signatory of
_____.

Witness my hand and official seal.

My commission expires: _____.

Notary Public

LESSOR, STATE OF MONTANA, DNRC:

By: _____

_____, Area Manager

_____ Land Office

STATE OF MONTANA)
) ss:
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____,
20____ by _____, Area Manager _____ Land Office, State of Montana, DNRC.

Witness my hand and official seal.

My commission expires: _____.

Notary Public

EXHIBIT A, Page 1

Site Plan/Plat

EXHIBIT B

BASE RENT EXHIBIT – EXAMPLE

*The following **EXAMPLE Rent Table** is based upon a hypothetical 6.0% bid lease rate. This Table will be adjusted based on the actual bid rate for the selected proposal.*

- The lease rate for this proposal is **6%**.
- The appraised value is **\$4.43/sq. ft.**
- The Lease Area is **54,885 sq. ft.**

The Base Rent for the first Lease Year is \$14,588 (unless amended following Final Plat approval to reflect a difference in the Lease Area).

Payment Table for Lease Year 1 through 15 (Adjustment Period 1). Adjustment Period 1:
The Adjustment Period Escalator is calculated using the minimum of 2% as an **EXAMPLE**.

Lease Year	Increaser - applied to previous year's Adjusted Base Rent	Adjusted Base Rent
First Lease Year	-	\$14,588
2	2%	\$14,880
3	2%	\$15,178
4	2%	\$15,482
5	2%	\$15,792
6	2%	\$16,108
7	2%	\$16,430
8	2%	\$16,759
9	2%	\$17,094
10	2%	\$17,436
11	2%	\$17,785
12	2%	\$18,141
13	2%	\$18,504
14	2%	\$18,874
15	2%	\$19,251

Lease Year 16: Annual Base Rent determined by the Market Adjustment in accordance with **Schedule 1** attached to this **Exhibit B**;

Lease Years 17 through 30 “Adjusted Rent” will be calculated by annually applying the Adjustment Period Escalator to the previous year’s Base Rent to determine Adjusted Base Rent.

Lease Year 31: Annual Base Rent determined by the Market Adjustment in accordance with **Schedule 1** attached to this **Exhibit B**;

Lease Years 32 through 45 “Adjusted Rent” will be calculated by annually applying the Adjustment Period Escalator to the previous year’s Base Rent to determine Adjusted Base Rent.

Lease Year 46: Annual Base Rent determined by the Market Adjustment in accordance with **Schedule 1** attached to this **Exhibit B**;

Lease Years 47 through 60 “Adjusted Rent” will be calculated by annually applying the Adjustment Period Escalator to the previous year’s Base Rent to determine Adjusted Base Rent.

Lease Year 61: Annual Base Rent determined by the Market Adjustment in accordance with **Schedule 1** attached to this **Exhibit B**;

Lease Years 62 through 75 “Adjusted Rent” will be calculated by annually applying the Adjustment Period Escalator to the previous year’s Base Rent to determine Adjusted Base Rent.

Lease Year 76: Annual Base Rent determined by the Market Adjustment in accordance with **Schedule 1** attached to this **Exhibit B**;

Lease Years 77 through 90 “Adjusted Rent” will be calculated by annually applying the Adjustment Period Escalator to the previous year’s Base Rent to determine Adjusted Base Rent.

Lease Year 91: Annual Base Rent determined by the Market Adjustment in accordance with **Schedule 1** attached to this **Exhibit B**;

Lease Years 92 through 99 “Adjusted Rent” will be calculated by annually applying the Adjustment Period Escalator to the previous year’s Base Rent to determine Adjusted Base Rent.

EXHIBIT B, SCHEDULE 1

MARKET ADJUSTMENT PROVISIONS - SAMPLE

Base Rent for the Premises shall be subject to Market Adjustments determined in accordance with the provisions of this **Schedule 1** ("Market Adjustment"). The Market Adjustments will apply in Lease Year 16, 31, 46, 61, 76 and 91. The process for the Market Adjustment will commence on the date that is 90 days after the first day of Lease Years 15, 30, 45, 60, 75, and 90 as applicable (the "Market Date").

The Market Adjustment will be determined by appraisal in accordance with the following provisions:

1. Selection of Appraisers. Within five days following the Market Date, Lessor and Lessee shall each hire an appraiser meeting the qualifications set forth in Section 3 below of this **Schedule 1** and shall instruct such appraiser to prepare an appraisal of the fair market value of the Land based upon the assumptions and meeting the requirements set forth in Section 4 of this **Schedule 1**. The appraiser so retained by Lessor is herein referred to as "Lessor's Appraiser," and the appraisal prepared by Lessor's Appraiser is herein referred to as "Lessor's Appraisal." The appraiser so retained by Lessee is herein referred to as "Lessee's Appraiser," and the appraisal prepared by Lessee's Appraiser is herein referred to as "Lessee's Appraisal." Each appraiser shall be subject to the approval of the other party, which approval will not be unreasonably withheld. Lessor's Appraisal and Lessee's Appraisal are collectively herein referred to as the "Party Appraisals." Lessor's Appraiser and Lessee's Appraiser shall each be instructed to complete their respective appraisals and deliver their results to both Lessor and Lessee simultaneously within 60 days following the Market Date.

2. Determination of Base Rent.

2.1 If the positive difference between the dollar amount of Lessor's Appraisal and the dollar amount of Lessee's Appraisal is equal to or less than 10% of the lower in dollar amount of the two Party Appraisals, then the Base Rent Factor (as hereinafter defined) shall be deemed to be the mathematical average of the two Party Appraisals. For example, in Lease Year 30, assume the following:

Lessor Appraisal = \$6.50 per square foot

Lessee Appraisal = \$6.10 per square foot

Average/Base Rent Factor = \$6.30 per square foot

New Annual Base Rent = \$6.30 x 54,886 (or applicable square footage) x 6% (or applicable Lease Rate) = \$54,885

2.2 If the positive difference between the dollar amount of Lessor's Appraisal and the dollar amount of Lessee's Appraisal is greater than 10% of the lower in dollar amount of the two Party Appraisals, then:

(a) Lessor and Lessee shall have 30 days within which to agree upon the Base Rent Factor; and

(b) If Lessor and Lessee are unable, within such 30 day period, to agree upon the Base Rent Factor, then Lessor's Appraiser and Lessee's Appraiser shall jointly select a third appraiser meeting the qualifications set forth in Section 3 of this **Schedule 1** (the "Third Appraiser") and instruct such Third Appraiser to prepare an appraisal of the fair market value of the Premises based upon the assumptions and meeting the requirements set forth in Section 4 of this **Schedule 1** (the "Third Appraisal"). The Third Appraiser shall be provided copies of all data utilized by Lessor's Appraiser and Lessee's Appraiser in preparing the Party Appraisals, as well as copies of Lessor's Appraisal and Lessee's Appraisal. The Third Appraiser shall be given 30 days within which to prepare and deliver the Third Appraisal to both Lessor and Lessee simultaneously. Each of Lessor's Appraisal, Lessee's Appraisal and the Third Appraisal are sometimes herein referred to individually as an "Appraisal" and collectively (in any combination or two or more) as the "Appraisals."

(c) In the event a Third Appraisal is required as aforesaid, the Base Rent Factor shall be deemed to be the mathematical average of the two Appraisals that are closest in dollar amount. Should the dollar amount of any one of the Appraisals happen to be exactly equal to the mathematical average of the other two Appraisals, then such dollar amount shall constitute the Base Rent Factor hereunder.

The Base Rent Factor determined in accordance with the foregoing provisions shall be binding and conclusive on the parties. "Base Rent Factor" means the per square foot fair market value of the Premises. Base Rent for the Premises, as adjusted by the Market Adjustment, shall be amount obtained by (a) multiplying the Base Rent Factor by the number of square feet of area of the Land, and (b) multiplying the resulting product by a percentage determined in accordance with 77-1-905, MCA, or the rate bid in the lease proposal, whichever is higher.

3. Qualifications of Appraisers; Replacement. Each of Lessor's Appraiser, Lessee's Appraiser and the Third Appraiser must (a) have an MAI designation by the Appraisal Institute (or similar designation available on the Market Date); (b) be a Certified General Appraiser licensed in the State of Montana (or similar designation available on the Market Date); and (c) have appraised similar types of uses in the three years prior to such Market Date. If any appraiser designated to serve in accordance with this **Schedule 1** shall fail, refuse or become unable to act, a new appraiser meeting the foregoing requirements shall be appointed in his or her place by the party who appointed the appraiser being replaced.

4. Briefing Session. Lessor's Appraiser and Lessee's Appraiser, should either so elect, shall be entitled to require a briefing session, to be held at Lessor's offices on a day and at a time mutually acceptable to Lessor, Lessee, Lessor's Appraiser and Lessee's Appraiser but in all events not earlier than 10 nor later than 15 days following the Market Date. At such session, both such appraisers shall be present and each shall be entitled to ask such questions of Lessor and Lessee.

5. Payment. Lessor shall pay all costs, fees and expenses of Lessor's Appraiser, and Lessee shall pay all costs, fees and expenses of Lessee's Appraiser. If a Third Appraiser is required, Lessor and Lessee shall share equally all costs, fees and expenses of such Third Appraiser.

EXHIBIT C

LIMITED POWER OF ATTORNEY

THIS LIMITED POWER OF ATTORNEY is made by _____ (“Lessor”), for the benefit of _____ (“Lessee”), with respect to the following facts:

RECITALS

A. Lessor and Lessee entered into that certain Commercial Ground Lease dated as of _____, 20__, (the “Lease”), pursuant to which Lessor demised and leased to Lessee and Lessee leased and accepted from Lessor the real property in _____, Montana, that is legally described on Exhibit A attached hereto and made a part hereof (the “Premises”). The Lease is evidenced by that certain Memorandum of Commercial Ground Lease dated _____, recorded on _____, 20__, in the real property records of the County of _____, State of Montana (the “Official Records”), in Book ____ at Page _____, under Reception No. _____ (the “Memorandum”).

B. Pursuant to the terms and conditions of Section 4 of the Lease, Lessee has certain rights to apply for and seek entitlements for the Premises, in Lessor’s name, without the prior consent of Lessor. For purposes of administrative convenience in evidencing Lessee’s rights pursuant to the Lease, the parties now desire to enter into this Limited Power of Attorney.

AGREEMENT

KNOW ALL MEN BY THESE PRESENTS, that Lessor does hereby make, constitute and appoint Lessee as its true and lawful attorney-in-fact to act for it and in its name, place and stead, with full power and authority to accomplish and complete only the following acts or transactions:

1. Authorization for Governmental Entitlements and Permits. To apply for and secure, in Lessor’s name if necessary, such governmental approvals, permits or other authorizations (including, without limitation, rezonings, master or final site plans, subdivision or P.U.D. plats and agreements, building permits, grading permits, sign permits and certificates of occupancy) as may be necessary or appropriate in connection with the development of the Premises or the installation, construction, change or alteration of, addition to or removal or demolition of, any improvements, or the use or enjoyment of the Premises.

2. Exculpation. Lessee will not incur any liability to Lessor for acting or refraining from acting hereunder so long as Lessee is acting or refraining from acting in accordance with the terms, provisions and conditions of the Lease. In the event that Lessee acts or refrains from acting in contravention to the terms of the Lease, Lessor will have all rights and remedies available to it as “Lessor” under the Lease.

3. Durability. This Power of Attorney shall not be affected by any dissolution, disability, incompetence or incapacity which Lessor may suffer at any future time or times,

whether or not the same shall be adjudicated by any court, it being the intent of Lessor that the authorizations and powers granted herein shall remain exercisable notwithstanding any such subsequent occurrence.

4. Governing Law. This Limited Power of Attorney shall be governed by the laws of the State of Montana in all respects, including its validity, construction, interpretation and termination.

5. Limited or Special Power. This Limited Power of Attorney is limited and special in nature, shall extend only to those specific matters described herein and shall not, in any way, be construed as a General Power of Attorney granted by Lessor.

6. Termination. This Limited Power of Attorney shall terminate on _____ [Insert Expiration Date from Lease]; provided, however, that if the Lease is earlier terminated in accordance with the terms and provisions of the Lease, as evidenced by a termination of the Memorandum recorded in the Official Records, then this Limited Power of Attorney will automatically terminate.

7. Incorporation of Recitals. The Recitals set forth above are hereby incorporated into and made part of this Limited Power of Attorney.

8. Recordation. At the election of Lessee, this Limited Power of Attorney will be recorded in the Official Records.

IN WITNESS WHEREOF, Lessor has made this Limited Power of Attorney as of the _____ day of _____, 20__.

LESSOR:

_____, a _____

By: _____, a _____, its

By: _____

Its: _____

LESSEE:

_____, a _____

By: _____, a _____, its

By: _____

Its: _____

STATE OF _____)
) ss:
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____,
20__, by _____.

Witness my hand and official seal.

My commission expires:_____.

Notary Public

STATE OF _____)
) ss:
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____,
20__, by _____.

Witness my hand and official seal.

My commission expires:_____.

Notary Public

EXHIBIT D

SAMPLE GROUND LESSOR NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS GROUND LESSOR NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this "Agreement") is made this ____ day of _____, 20__, by and among _____, _____ ("Lessor"), _____, _____ ("Ground Lessor"), and _____, a _____ ("Lessee").

RECITALS

A. Ground Lessor is the owner of certain real property (the "Real Property") that Ground Lessor has leased to Lessor pursuant to the terms of that certain Ground Lease between Ground Lessor and Lessor dated _____, 20__, (the "Ground Lease"). The Real Property is more particularly described in the Ground Lease.

B. Lessor and Lessee have entered into a Lease (the "Lease"), dated _____, 20__, demising a portion of the Real Property to Lessee as further described in the Lease (the "Leased Premises").

C. Ground Lessor, Lessor and Lessee are executing this Agreement to provide Lessee and Ground Lessor with certain rights upon expiration and/or termination of the Ground Lease.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessee, Lessor and Ground Lessor, intending to be legally bound hereby, covenant and agree as follows:

1. Consent. Ground Lessor hereby consents to and approves of the Lease and the leasing of the Leased Premises to Lessee. In addition, Ground Lessor consents to and approves of the construction of the improvements described in the Lease and all alterations and modifications required in connection therewith so long as the same comply with the Ground Lease.

2. Status of Ground Lease. Ground Lessor represents and warrants to Lessee that, to the best of Ground Lessor's knowledge and belief, as of the date of this Agreement: (a) Ground Lessor is the "Lessor" under the Ground Lease; (b) Ground Lessor is the sole holder of fee title to the Leased Premises; and (c) Ground Lessor has the full right and authority to enter into this Agreement. Ground Lessor further represents and warrants to Lessee that, to the best of Ground Lessor's knowledge and belief: (i) the Ground Lease is unmodified and in full force and effect and represents a valid lease of the Real Property; and (ii) neither Ground Lessor nor Lessor are in default under any terms or conditions of the Ground Lease.

3. Non-Disturbance. Provided that Lessee is not in default under the Lease or this Agreement beyond any applicable notice and cure period, and no circumstances exist which with the giving of notice or passage of time would be a default of Lessee under the Lease, Ground Lessor hereby agrees that Ground Lessor: (a) shall not disturb or deprive Lessee in or of its use, quiet enjoyment and possession (or its right to use, quiet enjoyment and possession) of the Leased Premises, or of any part thereof, or any right, benefit or privilege granted to or inuring to the benefit of Lessee under the Lease (including any right of renewal or extension thereof); (b) shall not terminate or affect the Lease; (c) shall recognize Lessee's rights, benefits and privileges under the Lease; and (d) shall recognize the leasehold estate of Lessee under all of the terms, covenants and conditions of the Lease for the remaining balance of the term of the Lease with the same force and effect as if Ground Lessor were the Lessor under the Lease. Ground Lessor covenants that any sale by it of the Leased Premises shall be made subject to the Lease and the rights of Lessee thereunder and hereunder.

4. Ground Lessor's Rights. By virtue of the attornment of Lessee set forth herein, Ground Lessor shall be entitled to exercise the claims, rights, powers, privileges, options and remedies of Lessor under the Lease and shall be further entitled to the benefits of, and to receive and enforce performance of, all of the covenants to be performed by Lessee under the Lease as though Ground Lessor were named therein as Lessor. Ground Lessor shall not, by virtue of the operation of this Agreement, be or become:

(a) Liable for any act or omission of Lessor arising prior to the date Ground Lessee takes possession of Lessee's interest in the Lease except to the extent such act or omission is of a continuing nature, such as, for example, a repair obligation;

(b) Liable for any offsets or deficiencies which Lessee might be entitled to assert against Lessor arising prior to the date Ground Lessor takes possession of Lessor's interest in the Lease, except to the extent that Ground Lessor has received the benefit of the act of Lessee giving rise to the right of deduction, such as, for example, relief of an obligation that would otherwise have been paid by Ground Lessor as Lessor under the Lease;

(c) Bound by any payment of rent or additional rent made by Lessee to Lessor for more than one month in advance, which payment was not required under the terms of the Lease; or

(d) Liable for any application, payment, repayment or reimbursement of all or any portion of the Security Deposit (as defined in the Lease) to or on behalf of Lessee unless or until Ground Lessor actually receives all or a portion of the Security Deposit from Lessor or otherwise obtains possession or control thereof, and then only to the extent of the amounts of the Security Deposit actually received or obtained by Ground Lessor.

5. Attornment. In the event of the termination or expiration of the term of the Ground Lease for any reason whatsoever, and if Lessee is not in default under the terms and conditions of the Lease beyond any applicable notice and cure period, then, and in any such event, Lessee shall not be made a party in the action or proceeding to terminate the Ground

Lease. Further, notwithstanding any contrary provisions in the Ground Lease, provided that Lessee is not in default under the Lease or this Agreement beyond any applicable notice and cure period, and no circumstances exist which with the giving of notice or the passage of time would be a default of Lessee under the Lease, Lessee shall not be evicted or moved or its possession or right to possession under the terms of the Lease be disturbed or in any way interfered with. Subject to the provisions of this Agreement, Lessee will attorn to Ground Lessor or any other party which obtains title to the Leased Premises pursuant to any remedy provided for by the Ground Lease or otherwise. Such attornment shall be effective and self-operative without the execution of any other instruments on the part of any party, provided that Ground Lessor notifies Lessee thereof, and in all events, the Lease shall continue in full force and effect, subject to the terms of this Agreement, as a direct Lease between Ground Lessor (or such party) and Lessee under all of the exact and verbatim terms and provisions of the Lease (including any rights of Lessee to renew or extend the term thereof), without the necessity for executing any new lease. In the event of such attornment, Ground Lessor shall be deemed to have assumed and shall assume, subject to the provisions of Section 4 herein, the performance of all of the affirmative covenants of Lessor occurring under the Lease from and after the time Ground Lessor becomes Lessor and until such time as such obligations are assumed by a bona fide purchaser, if any.

6. Acknowledgement of Lessee. Lessee acknowledges and agrees that this Agreement satisfies any condition or requirement for a non-disturbance agreement from Ground Lessor pursuant to the terms of the Lease. Except as otherwise expressly set forth in this Agreement, Lessee agrees that in the event of a conflict between the terms and provisions of the Lease and the terms and provisions of the Ground Lease, the terms and provisions of the Ground Lease will control.

7. Notice of Payment. After notice is given to Lessee by Ground Lessor pursuant hereto that the Ground Lease has been terminated or has expired and that the rentals under the Lease should be paid to Ground Lessor, Lessee shall pay to Ground Lessor, or in accordance with the directions of Ground Lessor, all rentals and other monies due and to become due to the Lessor under the Lease, and Lessor hereby expressly authorizes Lessee to make such payments to Ground Lessor and hereby releases and discharges Lessee of any from any liability to Lessor on account of any such payments.

8. Modifications. On and after the date of the Lease and throughout the term of the Lease, Ground Lessor and Lessor shall not enter into any cancellation, amendment or termination of the Ground Lease, which would materially and adversely affect Lessee's leasehold interest or Lessee's business operation in the Leased Premises, without Lessee's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed.

9. Terms of Lease.

10. Liability. Ground Lessor and Lessee agree that neither of them has any liability to the other by reason of any default by Lessor under the Ground Lease, and that their only liability to each other with respect to Lessee's use of the Leased Premises is as expressly provided herein. Furthermore, Lessee has no liability to Ground Lessor under the Lease until the expiration or earlier termination of the Ground Lease and Ground Lessor's assumption of the

Lease, pursuant to Section 5 of this Agreement. Nothing contained herein or in the Lease releases Lessor from its obligations under the Ground Lease.

11. Amendments. No modification, amendment, waiver or release of any provision of this Agreement or of any right, obligation, claim or cause of action arising hereunder shall be valid or binding for any purpose whatsoever unless in writing and duly executed by the party against which the same is brought to be asserted. This Agreement: (a) contains the entire understanding of Ground Lessor, Lessor and Lessee regarding the matters dealt with herein (any prior written or oral agreements between them as to such matters being superseded hereby); and (b) can be modified or waived in whole or in part only by a written instrument signed on behalf of the party against whom enforcement of the modification or waiver is sought.

12. Litigation. Provided that Lessee is not in default under the Lease beyond any applicable notice and cure period, Ground Lessor shall not institute any litigation naming Lessee as a defendant or otherwise terminating Lessee's leasehold interest in the Leased Premises unless Lessee is required to be named in such litigation by law, and only so long as Lessee's failure to defend against any such action shall not result in a waiver of its rights to continued possession under the Lease as set forth in this Agreement. The term Ground Lessor as used herein shall include any successor-in-interest to Ground Lessor.

13. Miscellaneous. This Agreement shall inure to the benefit of and shall be binding upon Lessee, Lessor and Ground Lessor, and their respective heirs, personal representatives, successors and assigns. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, but this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained therein. This Agreement shall be governed by and construed according to the laws of the State of Montana.

14. Notices. Any notice, demand or request required hereunder shall be given in writing at the addresses set forth below by personal delivery, nationally-recognized overnight courier service, or certified, first class mail, return receipt requested. Notice shall be deemed delivered (a) upon personal delivery, (b) the next business day after deposit with a nationally recognized overnight courier service, or (c) three days after deposit with certified, first class mail, postage prepaid. Rejection or other refusal to accept, or inability to deliver because of a changed address of which no notice has been given, will constitute receipt of the notice or other communication. The addresses may be changed by notice to the other party given in the same manner as provided above.

If to Ground Lessor:

With a copy to:

If to Lessor:

If to Lessee:

15. Attorneys' Fees. In the event of any litigation arising out of the enforcement or interpretation of any of the provisions of this Agreement, each party shall bear its own costs and attorney's fees.

16. Other Documentation. The parties hereto covenant and agree that they shall execute such other and further documents as are or may become necessary to carry out the objectives of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed on the day and year first above written.

LESSOR:

(TENANT):

By: _____
(Authorized signatory name and title)

STATE OF _____)
) ss:
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by _____ as _____ of _____, a _____.

Witness my hand and official seal.

My commission expires: _____.

Notary Public

GROUND LESSOR
STATE OF MONTANA, DNRC:

By: _____
John E. Tubbs, Director

STATE OF MONTANA)
) ss:
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by _____ as _____ of _____, a _____.

Witness my hand and official seal.

My commission expires: _____.

Notary Public

LESSEE:

_____:

By: _____

Its: _____

STATE OF MONTANA)

) ss:

COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by _____ as _____ of _____, a _____.

Witness my hand and official seal.

My commission expires: _____.

Notary Public